

**§ 1430.307**

**7 CFR Ch. XIV (1-1-08 Edition)**

paragraphs (a) through (e) of this section are added together to determine total eligible losses incurred by the dairy operation subject to all other eligibility requirements as may be included in this part or elsewhere.

(g) Payment on eligible dairy operation losses is calculated using whole pounds of milk. No double counting is permitted, and only one payment will be made for each pound of milk calculated as an eligible loss after the distribution of the operation's eligible production loss among the producers of the dairy operation according to §1420.307(b). Payments under this part will not be affected by any payments for dumped or spoiled milk that the dairy operation may have received from its milk handler, or marketing cooperative, or any other private party.

(h) If a producer is eligible to receive payments under this part and benefits under any other program administered by the Secretary for the same losses, the producer must choose whether to receive the other program benefits or payments under this part, but shall not be eligible for both. The limitation on multiple benefits prohibits a producer from being compensated more than once for the same losses. If the other USDA program benefits are not available until after an application for benefits has been filed under this part, the producer may, to avoid this restriction on such other benefits, refund the total amount of the payment to the administrative FSA office from which the payment was received.

**§ 1430.307 Rate of payment and limitations on funding.**

(a) Subject to the availability of funds, the payment rate for eligible production and spoilage losses determined according to §1430.306 is, depending on the State, the average monthly Mailbox milk price for the Florida, the Southeast, or the Appalachian States Marketing Orders as reported by the Agricultural Marketing Service during the months of August, September, and October of 2004. Maximum payment rates for eligible losses for dairy operations located in specific states are as follows:

(1) Florida—\$17.62 per hundredweight (\$0.1762 per pound).

(2) Alabama, Georgia, Louisiana, and Mississippi—\$16.26 per hundredweight (\$0.1626 per pound).

(3) North Carolina and South Carolina—\$15.59 per hundredweight (\$0.1559 per pound).

(b) Subject to the availability of funds, each eligible dairy operation's payment is calculated by multiplying the applicable payment rate under paragraph (a) of this section by the operation's total eligible losses. Where there are multiple producers in the dairy operation, individual producers' payments are disbursed according to each producer's share of the dairy operation's production as specified in the Application.

(c) If the total value of losses claimed under paragraph (b) of this section exceeds the \$10 million available for the 2004 Dairy Disaster Assistance Payment Program, less any reserve that may be created under paragraph (e) of this section, total eligible losses of individual dairy operations that, as calculated as an overall percentage for the full three month period, August–October 2004 (not a monthly average for any one month), are greater than 20 percent of the total base production for those three months will be paid at the maximum rate under paragraph (a) of this section to the extent available funding allows. A loss of over 20 percent in only one or two of the eligible months does not itself qualify for the maximum per-pound payment. Total eligible losses for a producer, as calculated under §1430.306, of less than or equal to 20 percent during the eligibility period of August to October 2004 will be paid at a rate determined by dividing the eligible losses of less than 20 percent by the funds remaining after making payments for all eligible losses above the 20 percent threshold.

(d) In no event shall the payment exceed the value determined by multiplying the producer's total eligible loss times the average price received for commercial milk production in their area as defined in paragraph (a) of this section.

(e) A reserve may be created to handle claims that extend beyond the conclusion of the application period, but

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claims shall not be payable once the available funding is expended.

### § 1430.308 Availability of funds.

The total available program funds shall be \$10 million as provided by section 103 of Division B of Public Law 108-324.

### § 1430.309 Appeals.

Any producer who is dissatisfied with a determination made pursuant to this subpart may request reconsideration or appeal of such determination in accordance with the appeal regulations set forth at 7 CFR parts 11 and 780. Appeals of determinations of ineligibility or payment amounts are subject to the limitations in §§ 1430.307 and 1430.308.

### § 1430.310 Misrepresentation and scheme or device.

(a) In addition to other penalties, sanctions or remedies as may apply, a dairy producer shall be ineligible to receive assistance under this program if the producer is determined by FSA or CCC to have:

(1) Adopted any scheme or device that tends to defeat the purpose of this program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

(b) Any funds disbursed pursuant to this part to any person or operation engaged in a misrepresentation, scheme, or device, shall be refunded with interest together with such other sums as may become due. Any dairy operation or person engaged in acts prohibited by this section and any dairy operation or person receiving payment under this subpart shall be jointly and severally liable with other persons or operations involved in such claim for benefits for any refund due under this section and for related charges. The remedies provided in this subpart shall be in addition to other civil, criminal, or administrative remedies that may apply.

### § 1430.311 Death, incompetence, or disappearance.

In the case of death, incompetency, disappearance, or dissolution of a person that is eligible to receive benefits in accordance with this subpart, such

alternate person or persons specified in 7 CFR part 707 may receive such benefits, as determined appropriate by FSA.

### § 1430.312 Maintaining records.

Persons applying for benefits under this program must maintain records and accounts to document all eligibility requirements specified herein. Such records and accounts must be retained for 3 years after the date of payment to the dairy operations under this program. Destruction of the records after such date shall be at the risk of the party undertaking the destruction.

### § 1430.313 Refunds; joint and several liability.

(a) Excess payments, payments provided as the result of erroneous information provided by any person, or payments resulting from a failure to comply with any requirement or condition for payment under the application or this subpart, must be refunded to CCC.

(b) A refund required under this section shall be due with interest determined in accordance with paragraph (d) of this section and late payment charges as provided in 7 CFR part 1403.

(c) Persons signing a dairy operation's application as having an interest in the operation shall be jointly and severally liable for any refund and related charges found to be due under this section.

(d) Interest shall be applicable to any refunds required in accordance with 7 CFR parts 792 and 1403. Such interest shall be charged at the rate the United States Department of the Treasury charges CCC for funds, and shall accrue from the date FSA or CCC made the erroneous payment to the date of repayment.

(e) FSA may waive the accrual of interest if it determines that the cause of the erroneous determination was not due to any action of the person, or was beyond the control of the person committing the violation. Any waiver is at the discretion of FSA alone.

### § 1430.314 Miscellaneous provisions.

(a) *Offset.* CCC may offset or withhold any amount due CCC under this subpart in accordance with 7 CFR part 1403.